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Global Crossing

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February 23, 2001

BY OVERNIGHT MAIL

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket Nos. 00-256, *et al.* – MAG Petition

Dear Ms. Salas:

Enclosed for filing please find an original and ten (10) paper and one electronic copy of the Comments of Global Crossing North America, Inc. in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed, self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: Ms. Wanda Harris, Competitive Pricing Division (1 paper and 1 diskette)

Ms. Sheryl Todd, Accounting Policy Division (1paper)

International Transcription Service (1 paper and 1 diskette)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	**CC Docket No. 00-256**
	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	**CC Docket No. 98-77**
	)	
Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers	)	**CC Docket No. 98-166**

COMMENTS OF GLOBAL CROSSING
NORTH AMERICA, INC.

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February 23, 2001

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Summary

Global Crossing hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.

The MAG Plan is a step in the right direction towards establishing a comprehensive solution for regulating non-price cap incumbent LECs. The MAG Plan, however, needs to be modified to ensure that non-price cap LECs bear an equitable share of the risks associated with incentive regulation while, at the same time, not perpetuating economic distortions that currently exist in rural America's telecommunications pricing structures. Only with such modifications will the MAG Plan deliver the greatest public interest benefits.

First, the Commission should reform interstate access charge cost recovery for non-price cap LECs. As proposed in the MAG Plan, increasing the SLC, while decreasing traffic sensitive rates, provides a more economically efficient means for recovering interstate access costs. The MAG Plan does not go far enough, however, with respect to setting the CAR for Path A carriers. The CAR should be set at the same rate that was adopted for rural price cap carriers in last spring's CALLS Order. The rural price-cap carriers are the best benchmark group to use for setting access rates for the non-price cap rural LECs.

Second, Path A carriers, like other ILECs subject to incentive regulation, should be subject to some form of a productivity offset. A productivity offset will

ensure that consumers share the benefits of the efficiency-enhancing incentives of price regulation.

Third, under no circumstances should the Commission impose new regulations or rate structure requirements on IXCs. The interexchange market is fully competitive and Commission intervention is unwarranted. The MAG Plan is an ILEC access reform proposal, and should be transformed into a "re-regulate the IXCs" scheme.

Fourth, the Commission should retain the existing cap on high cost loop support and the corporate operations expense limitation. Without such limitations, the high cost fund would simply explode and ratepayers across the nation would ultimately bear the additional costs. Empirical evidence is abundant that there are may non-price cap rural LECs with local rates far below those of their urban cohorts.

Finally, the Commission should retain the all-or-nothing rule to prevent "gaming the system," just as the Commission did when it introduced price cap regulation for the larger incumbent LECs. A meritorious exception could be the subject of a waiver petition.

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers	)	**CC Docket No. 00-256**
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Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**
	)	
Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation	)	**CC Docket No. 98-97**
	)	
Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers	)	**CC Docket No. 98-166**

COMMENTS OF GLOBAL CROSSING NORTH AMERICA, INC.

Introduction

Global Crossing North America, Inc. ("Global Crossing") hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

The MAG Plan is a step in the right direction towards establishing a comprehensive solution for regulating non-price cap incumbent local exchange carriers ("LECs"). The MAG Plan, however, needs to be modified to ensure that non-price cap LECs bear an equitable share of the risks associated with

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1 *Multi-Association Group ("MAG") Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Notice of Proposed Rulemaking, FCC 00-448 (adopted December 21, 2000) ("MAG Notice").

incentive regulation while, at the same time, not perpetuating economic distortions that currently exist in rural America's telecommunications pricing structures. Only with such modifications will the MAG Plan deliver the greatest public interest benefits.

First, the Commission should reform interstate access charge cost recovery for non-price cap LECs. As proposed in the MAG Plan, increasing the subscriber line charge ("SLC"), while decreasing traffic sensitive rates, provides a more economically efficient means for recovering interstate access costs. The MAG Plan does not go far enough, however, with respect to setting the Composite Access Rate ("CAR") for Path A carriers. The CAR should be set at the same rate that was adopted for rural price cap carriers in last spring's CALLS Order. The rural price-cap carriers are the best benchmark group to use for setting access rates for the non-price cap rural LECs.

Second, Path A carriers, like other ILECs subject to incentive regulation, should be subject to some form of a productivity offset. A productivity offset will ensure that consumers share the benefits of the efficiency-enhancing incentives of price regulation.

Third, under no circumstances should the Commission impose new regulations or rate structure requirements on interexchange carriers ("IXCs"). The interexchange market is fully competitive and Commission intervention is unwarranted. The MAG Plan is an ILEC access reform proposal, and should be transformed into a "re-regulate the IXCs" scheme.

Fourth, the Commission should retain the existing cap on high cost loop support and the corporate operations expense limitation. Without such limitations, the high cost fund would simply explode and ratepayers across the nation would ultimately bear the additional costs. Empirical evidence is abundant that there are may non-price cap rural LECs with local rates far below those of their urban cohorts.

Finally, the Commission should retain the all-or-nothing rule to prevent "gaming the system," just as the Commission did when it introduced price cap regulation for the larger incumbent LECs. A meritorious exception could be the subject of a waiver petition.

Argument

I. THE MAG PLAN MOVES THE REGULATION OF NON-PRICE CAP INCUMBENT LECs IN THE RIGHT DIRECTION

A. The MAG Plan Properly Advances Common Line Reform

The Commission has long recognized the economic benefits of allowing incumbent LECs to recover non-traffic sensitive ("NTS") costs on a flat-rated basis from the cost causer.[2] As recently as last spring, the Commission adopted the modified proposal of the Coalition for Affordable Local and Long Distance Service ("CALLS") and affirmed this basic economic cost recovery principle for the price cap LECs' provision of interstate access services.[3] In the CALLS

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[2] *See MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, 93 F.C.C. 2d 241 (1983) ("1983 Access Charge Order"); *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, FCC 97-158 (1997) ("Access Charge Reform First Report and Order").

[3] *Access Charge Reform*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-2, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193 (adopted May 31, 2000) ("CALLS Order").

Order, the Commission allowed the cap on SLCs to increase for both residential and business subscribers, while simultaneously reducing traffic sensitive rates.[4] The Commission identified the CALLS proposal as pro-competitive and stated that it would introduce immediate significant consumer benefits.[5]

With respect to common line reform, the MAG Plan contains proposals similar to those adopted by the Commission in the CALLS Order. In particular, the MAG Plan, for all Path A and Path B LECs, proposes to increase the SLC cap for residential and single line businesses to $5.00 per month beginning on July 1, 2001 and then increase the SLC further only after Commission review.[6] The MAG Plan also proposes increasing the SLC cap for multi-line business customers from the current rate of $6.00 per line to $9.20 per line by July 1, 2003.[7] These changes will substantially increase the portion of common line revenue requirement through flat-rated charges.

Global Crossing supports the MAG Plan's common line proposals for non-price cap LECs and encourages the Commission to adopt them. These proposals are consistent with Commission precedent and would take the Commission one step closer toward achieving its longstanding goal that NTS common line costs should be recovered on a flat-rated basis from end users and not on a usage basis from interexchange carriers.[8] In addition, the common line

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4 CALLS Order at para. 76, Appendix B-51.

5 CALLS Order at para. 75.

6 *Petition for Rulemaking of the LEC Multi-Association Group*, filed October 20, 2000 ("MAG Petition") at 10.

7 MAG Petition at 10.

8 *See* CALLS Order at para. 64, *citing* 1983 Access Charge Order at paras. 264-65.

reform proposals offered in the MAG Plan are fully consistent with section 254 and its principles. All things being equal, so long as the Commission retains the proposed caps on the SLCs, access rates between urban and rural areas will remain "reasonably comparable."[9]

B. The MAG Plan Properly Reduces Path A Carriers' Switched Access Rates

In addition to common line reform, the Commission over the years has attempted to reform, through rate structure modifications and price reductions, per-minute interstate access charges. The primary goal has always been to allow competition to establish efficient cost-based access charges. In the CALLS Order, the Commission removed $2.1 billion from traffic-sensitive switched access charges for price cap LECs and established traffic sensitive target rates of .55 cents, .65 cents, and .95 cents for BOCs/GTE, other non-rural price cap LECs, and rural price cap LECs, respectively.[10]

The MAG Plan builds on the precedent established in the CALLS Order and proposes a similar percentage reduction in switched access rates for Path A carriers. The MAG Plan proposes a new weighted per-minute aggregate target rate, known as the CAR, based on the existing per-minute switched access rate elements.[11] Under the plan, the Commission would set the CAR for Path A LECs at 1.6 cents per minute on average by July 1, 2003. According the MAG Plan, establishing a CAR at the 1.6 cents per minute level reflects a percentage

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9 *See* MAG Notice at 17; 47 U.S.C. § 254.

10 CALLS Order at paras. 151, 162.

11 MAG Petition at 10-11.

reduction in the per-minute switched access rates of non-price LECs comparable to that established in the CALLS Order.[12]

Global Crossing supports the MAG Plan's efforts to move per-minute switched access charges closer to costs, but believes that the MAG Plan does not go far enough. Regardless of whether the subscriber purchases services from a price cap or non-price cap LEC, per-minute access charges that are significantly above cost artificially suppress demand for interstate long distance services. In this regard, reducing per-minute switched access rates from either 4.3 cents per-minute (using NECA data) or 3.94 cents (using MAG data) is essential for promoting efficient cost recovery for Path A carriers. In addition, reducing such rates for Path A LECs will provide significant public interest benefits by: (1) reducing or eliminating competitive distortions; (2) minimizing some of the tension between the pricing of circuit-switched and packet-switched services; and (3) removing implicit universal service support included in rural carriers' interstate access charges.[13]

The MAG Plan, however, does not lower per-minute switched access rates far enough. It is clear that most non-price cap LECs serve rural and insular areas. It is not clear, however, why these "rural" carriers should be treated any differently from "rural" price cap LECs regarding the establishment of the target access rates. In the CALLS Order, the Commission recognized the need to establish a separate target rate for "rural" price cap LECs necessary to address

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12 MAG Petition at 11.

13 See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Recommended Decision, FCC 00J-4 (adopted December 22, 2000) at para. 20.

their high costs and diverse service conditions. For these carriers, the Commission established a 0.95 cent target rate if the carrier had a holding company average of less than 19 End User Common Line charge lines per square mile served.[14] Without justification or explanation as to why Path A carriers are more "rural" than "rural" price cap carriers, the MAG Plan establishes a comparable target rate that is substantially higher than the rate adopted in the CALLS Order. Because rural price cap and non-price cap carriers are similar and they are subject to similar scale, scope, and terrain limitations, the Commission should modify the MAG Plan and adopt a target CAR equal to 0.95 cent for Path A carriers. No reasoned justification has been advanced for a higher target CAR.

II. PATH A CARRIERS MUST BE SUBJECT TO A PRODUCTIVITY OFFSET

The MAG Plan creates a new form of incentive regulation for non-price cap carriers electing the Path A regulatory track. Under this form of regulation, a LEC's interstate access revenue per line ("RPL") is fixed, but adjusted annually for inflation. Total interstate revenues would be determined by multiplying the annual RPL by the carrier's total number of lines. What is missing from the MAG Plan is any concept of a productivity offset.

From its inception, the Commission's incentive-based regulatory scheme (*i.e.*, price caps) has always required carriers to adjust rates annually to reflect productivity improvements in relation to the overall economy's rate of productivity

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[14] CALLS Order at para. 162.

growth.[15] This productivity adjustment was made to the price cap index, along with adjustments for inflation and exogenous cost changes. In the MAG Notice, the Commission properly sought comment on whether a productivity offset should be included in the RPL that would apply to Path A LECs.[16]

Under the MAG Plan, once the RPL is initialized, the only annual adjustment made is for inflation. While the proponents of the MAG Plan go to great lengths to explain why an inflation adjustment is necessary, they make no attempt to explain why Path A carriers should not also be subject to a productivity offset.[17] As the Commission explained over a decade ago, "incentive regulation will reward companies that become more productive and efficient, while ensuring that productivity and efficiency gains are shared with ratepayers."[18] Consequently, under the proposed MAG Plan, Path A carriers that operate more efficiently and productively reap all of the gains, while sharing none of these benefits with their customers. In addition, there is no public policy rationale for distinguishing Path A LECs, with no productivity offset, from rural price cap LECs that are subject to a productivity offset.

As proposed, the MAG Plan offers Path A carriers all the benefits of incentive regulation (and then some)[19] without bearing any of the risks. Global

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15 *Policy and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, at para. 75 (1990) ("LEC Price Cap Order").

16 MAG Notice at para. 20.

17 *See* MAG Petition at 5, 17, Exhibit 2, p. 19.

18 LEC Price Cap Order at para. 1.

19 Under the MAG Plan, Path A carriers would be made substantially more than whole for converting to incentive regulation because of the proposed Rate Averaging Support. Path A carriers wound not only receive traditional explicit

Crossing urges the Commission to establish a productivity factor for Path A carriers in a manner similar to the rules adopted for rural price cap LECs in the CALLS Order.[20] The purpose of this request is to ensure that rates for Path A carriers will decline relative to the measure of inflation.[21] Alternatively, because the MAG Plan addresses "revenues per line" for Path A LECs and does not attempt to cap the total charges a LEC may impose for each interstate access service basket, the Commission may wish to modify the MAG Plan by eliminating the annual inflation adjustment to the RPL. This change would effectively freeze the target CAR at the end of the Path A transition, which is similar to the result adopted the Commission in the CALLS Order.[22]

III. THE COMMISSION SHOULD REJECT ATTEMPTS TO REGULATE THE FIERCELY COMPETITIVE INTEREXCHANGE INDUSTRY

Using section 254(b)(3) and 254(g) as authority, the MAG Plan attempts to impose a host of new regulations on IXCs that serve rural or high cost areas. In particular, the plan would require all IXCs to pass through to long distance customers the savings that IXCs receive from the MAG Plan's access charge reforms. The plan also would require IXCs to offer to their rural customers the

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universal service support, such as high cost loop support, local switching support, long term support and Lifeline support, but also subsidies for special access, number portability, CALEA, amortization of depreciation reserve deficiencies, changes in the USOA, changes in Separations, state and federal tax law changes and changes in rules governing affiliate transactions and cost allocation. MAG Petition at Exhibit 3, pp. 5-6.

20 CALLS Order at para. 163. For example, as imposed on rural price cap LECs, the Commission could determine a method to target productivity adjustments to carrier common line ("CCL") charges in the common line basket, and once the CCL charges are eliminated, set X equal to the GDP-PI.

21 *See, e.g.,* LEC Price Cap Order at para. 75.

22 CALLS Order at para. 163.

same optional calling plans, including discount and volume-based plans, available to their urban customers. Finally, the MAG Plan would prohibit IXCs from imposing minimum monthly charges on their residential customers.[23] Global Crossing opposes this latest attempt to regulate the rates and service offerings of interexchange carriers.

First, the Commission simply does not regulate the rates of nondominant interexchange carriers.[24] To mandate a flow through or otherwise prescribe a rate structure for all IXCs serving rural America would ignore the competitive and economic realities of the long distance market.

Second, the Commission has already addressed and rejected many arguments similar to those offered in the MAG Plan in CC Docket No. 96-61. In that proceeding, the Commission, using its forbearance authority, concluded that certain rate structures and specialized tariffs for IXCs are permissible and fully consistent with the rate averaging provisions of the Communications Act.[25] In particular, the Commission discussed at length IXC provision of optional calling plans and the rules that apply to these offerings.[26] The MAG Plan offers no new evidence to justify a change in Commission policy.

Finally, consumers in rural America could actually be harmed if IXCs were required to comply with the MAG proposals. If IXCs are not permitted to recover their costs in an economically efficient manner or determine how or when to

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23 MAG Petition at Exhibit 3, p.14.

24 *See, e.g.*, MAG Notice at para. 23.

25 *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Report and Order, FCC 96-331 (adopted August 7, 1996) ("Rate Averaging Order").

target certain customers with their cost savings (however derived), the MAG Plan could provide IXCs with the incentive to limit the services that they offer to rural America. This result was clearly not the intent of sections 254(b)(4) or 254(g).

IV. THE COMMISSION SHOULD RETAIN THE EXISTING CAP ON HIGH COST LOOP SUPPORT AND THE CORPORATE OPERATIONS EXPENSE LIMITATION

In the First Report and Order in the Universal Service proceeding, the Commission supported the continuation of the cap on high cost loop support.[27] In that order, the Commission also limited the amount of corporate operations expense to be included in the calculus for determining high cost support.[28] The MAG Plan proposes to reverse these earlier Commission decisions under the rationale that lifting the cap and providing support for corporate operations expenses will provide LECs with a greater incentive to make the investments required to deliver advanced services in high cost areas.[29]

The Commission should reject these proposals. As the Commission has recognized, an overall cap on high cost loop support prevents excessive growth in the size of the fund and encourage carriers to operate more efficiently by limiting the amount of support they receive. It is also important to recognize that the Commission maintains caps on other universal service programs, such as schools and libraries, and that caps are necessary ultimately to protect

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26 Rate Averaging Order at paras. 24-28.

27 *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (adopted May 7, 1997) ("Universal Service Order"), at para. 302.

28 Universal Service Order at para. 307.

29 MAG Petition at 16.

ratepayers across the Nation. If anything, the Commission should look for ways to shrink or reduce the cap.

The Commission should also continue to limit the amount of corporate operations expense included in universal service funding. These expenses have little or no bearing on the cost of providing service in rural territories and the MAG Plan offers no evidence to the contrary.

Regarding advanced services, non price-cap LECs are free today to upgrade their facilities to offer high speed Internet access services. Certainly, the interstate costs associated with the provision of certain DSL or dedicated Internet access services can be recovered through interstate rates.[30] If the federal rates for such services are unreasonably high because of the rural or insular nature of the operating territory, then the proponents of the MAG Plan should raise their concerns, in the first instance, before the Federal-State Joint Board on Universal Service.[31]

The proponents of the MAG Plan have failed to articulate any substantial reason why the limitation on high cost support or the exclusion of corporate operations expense act to curtail investment in the delivery of advanced services. Like other carriers, rural LECs can be expected to invest in advanced services if the expected return justifies the investment. The decision whether or not to retain the cap on high cost support should have no bearing on the economic value of such investments.

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30 *See GTE Telephone Operating Cos.*, CC Docket No. 98-79, Memorandum Opinion and Order, FCC 98-292 (adopted October 30, 1998).

31 *See* MAG Notice at para. 21 and note 42.

In addition, because corporate operations expense bear little or no relationship to the costs of providing advanced (or even basic) services, there is little reason to expect that including additional corporate operations expense in the formula for determining high cost support would stimulate investment in advanced services.

V. ELIMINATION OF THE ALL-OR-NOTHING RULE IS NOT WARRANTED

In the MAG Notice, the Commission properly sought comment on whether the all-or-nothing rule should be eliminated.[32] Not surprisingly, the MAG Plan offers virtually no justification for repealing the Commission's long standing rule or why the concerns raised by the Commission nearly a decade ago are no longer valid today.

The Commission adopted the all-or-nothing rule to prevent several forms of undesirable behavior. If LECs were free to pick and choose which of their study areas would be subject to price regulation, they would have a strong incentive to leave the truly high-cost exchanges under traditional rate-or-return regulation, while moving their lower cost study areas to incentive regulation. This would significantly blunt the efficiency-enhancing incentives of price regulation. In addition, a pick and choose regime would encourage LECs improperly to shift costs from their price regulated study areas to their rate-of-return regulated study areas, leaving consumers in the latter study areas to pick up the tab. This would reward improper behavior, not efficiency.[33] Finally, LECs subject to mixed

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32 MAG Notice at para. 22.

33 *See* LEC Price Cap Order at paras. 271-72.

regulation would also have an incentive to game the system through mergers and acquisitions.[34]

The all-or-nothing rule was affirmed by the Commission on reconsideration, affirmed by the United States Court of Appeals for the District of Columbia, and remains good public policy today.[35]

Conclusion

For the foregoing reasons, the Commission should adopt the MAG Plan subject to the modifications discussed herein.

Respectfully submitted,

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February 23, 2001

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34 *See* LEC Price Cap Order at para. 284.

35 *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Order on Reconsideration, FCC 91-115 (adopted April 9, 1991) at paras. 146-149; *National Rural Telecom Association v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

Certificate of Service

I hereby certify that, on this 23rd day of February, 2001, copies of the foregoing Comments of Global Crossing North America, Inc. were served by first-class mail, postage prepaid, upon:

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